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\* ALSO ADMITTED IN N.C.

November 6, 2017

**VIA, ELECTRONIC FILING**

The Honorable Jocelyn Boyd  
Chief Clerk and Administrator  
The Public Service Commission of South Carolina  
101 Executive Center Drive  
Columbia, South Carolina 29210

Re: • Docket: 2017-321-E  
• **Reply to Defendants/Respondents' Response**

Dear Ms. Boyd:

Enclosed for filing, please find the Cover Sheet and Reply to  
Defendants/Respondents' Response to Complainants/Petitioners' Motion to Maintain Status  
Quo and Certificate of Service.

Please notify the undersigned if you there is anything else you may need.

Respectfully Submitted,

/s/ \_\_\_\_\_  
Richard L. Whitt

RLW/cas

**BEFORE  
THE PUBLIC SERVICE COMMISSION  
OF SOUTH CAROLINA  
DOCKET NO. 2017-321-E**

IN RE:	)	
Whitetail Solar, LLC; Rhubarb One LLC;	)	
Cotton Solar, LLC; and Shorthorn Holdings,	)	
LLC,	)	
	)	
Complainants/Petitioners,	)	<b>REPLY</b>
	)	<b>TO</b>
	)	<b>DEFENDANTS/RESPONDENTS'</b>
	)	<b>RESPONSE TO</b>
v.	)	<b>COMPLAINTS/PETITIONERS'</b>
	)	<b>MOTION TO MAINTAIN STATUS</b>
Duke Energy Carolinas, LLC and	)	<b>QUO.</b>
Duke Energy Progress, LLC,	)	
	)	
	)	
Defendants/Respondents.	)	

**INTRODUCTION**

The above-referenced Complainants/Petitioners, filed a Motion with this Commission on October 16, 2017, to Maintain Status Quo between the parties hereto, as of October 16, 2017. The Defendants/Respondents, Duke Energy Carolinas, LLC and Duke Energy Progress, LLC, (hereinafter together as, "Duke"), filed a Response in Opposition to Motion to Maintain Status Quo with this Commission on October 30, 2017.

The avoided cost rates currently available to the projects will be reset with the expiration of the Power Purchase Agreement ("PPA") terms currently offered by Duke. The loss of currently-available rates while the PPA term length is under dispute represents a material risk to the viability of the projects. Additionally, the loss of interconnection queue position while the PPA term length is under dispute represents a material risk to the viability of the projects.

Furthermore, Duke has admitted in writing that general policy changes, such as Duke's blanket offering of only unfinanceable, five year PPA terms, do not require Notices of Dispute, (see, **Exhibit "A", attached hereto**).

Complaints/Petitioners Reply follows.

**REPLY TO RESPONSE IN OPPOSITION TO  
MOTION TO MAINTAIN STATUS QUO**

Movants moved this Commission to maintain the status quo, (defined immediately hereinbelow), between the Complainants/Petitioners and Duke, as of October 16, 2017. The avoided cost rates currently available to the projects will be reset with the expiration of the PPA terms currently offered by Duke. The loss of currently-available rates while the PPA term length is under dispute represents a material risk to the viability of the projects. Additionally, the loss of interconnection queue position while the PPA term length is under dispute represents a material risk to the viability of the projects. As a result, the Complainants/Petitioners in this Docket, have (i) several PPA deadlines with Duke, that will expire on, and after, October 16, 2017, (ii) several interconnection Agreement payment due dates and (iii) a concern for queue position protection. Therefore, the Complaints/Petitioners need to maintain the Status Quo between the Complainants/Petitioners and Duke, as of October 16, 2017, until Complainants' Complaint is finally decided by this Commission.

**Particulars of Request to Maintain Status Quo.**

Because Duke has informed the solar developer community that Duke only intends to offer unfinanceable, 5 year term PPAs, on a going-forward basis, Complainants/Petitioners' request to maintain the status quo, means that this Commission should hold that Duke cannot, as of October 16, 2017, enforce Contracts/rights/deadlines against Complainants/Petitioners, by forcing Complainants/Petitioners and others, to enter into unfinanceable, 5 year term PPAs.

**Facts/Effect on Specific Contracts/Rights/Deadlines.**

Because Duke has informed the solar developer community that on a going-forward basis Duke will only offer PPAs with a 5 year term, Duke's decision will preclude the projects' ability to comply with performance assurances and other payments required under all PPAs and Interconnection Agreements, which will affect queue positions. Complainants/Petitioners contention is the subject matter of this Complaint Docket, and the Motion to Maintain Status Quo. Therefore, the specific Contract/rights/deadlines at issue are all Contracts/rights/deadlines because of Duke's decision to only offer unfinanceable, 5 year PPA term agreements.

Bad-Faith by Duke – Violation of Commission Order.

The grounds for the Motion include Complainants'/Petitioners' allegations in this Complaint Docket, that Duke is acting in bad-faith in declaring an arbitrary PPA **term of only five years, which makes solar projects in Duke's territories unfinanceable**. Duke is under a specific Order from this Commission to negotiate in good-faith in its purchase of electrical energy. *See* Commission Order No. 85-347, dated August 2, 1985, Docket No. 80-251-E. Duke arbitrary decision to only offer unfinanceable, 5 year PPA Terms in South Carolina, shows that Duke is not acting in good-faith and its actions are violative of the specific Commission Order described above. Duke's queue is admitted to be backlogged (**See "Exhibit B" attached hereto**) and Duke's recent decision to only offer unfinanceable, 5 year PPA terms in South Carolina is moreover a pretextual move to purge or eliminate Duke's queue by offering a short PPA term that will make these projects unfinanceable.

Notice of Disputes.

Duke argues, *inter alia*, that Complainants/Petitioners should have brought a dispute under Section 6.2, of the South Carolina Generator Interconnection Procedures. Factually, Complainants/Petitioners sought and received a written clarification from Duke that Notice of Disputes were not required because Duke's actions, in offering an unfinanceable, 5 year PPA term was a general policy, affecting all solar projects in Duke's territories, (**see, Exhibit "B"**).

Duke's Argument - Complainants Accepted PPAs on October 16, 2017.

Complainants/Petitioners, tentatively executed PPAs on October 16, 2017, but are bound to no performance thereunder, as Complainants/Petitioners can still reject the PPAs during the due diligence period of the PPAs. Furthermore, Complainants/Petitioners filed a formal Complaint and the Motion to Maintain Status Quo, on October 16, 2017, because of Duke's insistence that Complainants/Petitioners execute unfinanceable, 5 year term PPA.

It would be unfair for Complainants/Petitioners to lose Contract rights, substantial interconnection payments, or queue position, because of Duke's improper limitation on PPA terms.

### **CONCLUSION**

**WHEREFORE**, the Complainants, based on the foregoing, move to maintain the status quo, between the Complainants/Petitioners and Duke, as of October 16, 2017. The above-referenced Complainants respectfully request that the relief sought in this Motion be granted.

This 6<sup>th</sup> day of November, 2017.

Respectfully Submitted,

/s/

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Richard L. Whitt,  
RLWhitt@AustinRogersPA.com  
AUSTIN & ROGERS, P.A.,  
508 Hampton Street, Suite 300  
Columbia, South Carolina 29201  
(803) 251-7442  
Attorney for the Complainants/Petitioners.

November 6, 2017  
Columbia, South Carolina

## EXHIBIT, "A"

**From:** Dulin, Rebecca Jean [<mailto:Rebecca.Dulin@duke-energy.com>]

**Sent:** Thursday, July 13, 2017 11:55 AM

**To:** Richard Whitt <[rwhitt@AustinRogersPA.com](mailto:rwhitt@AustinRogersPA.com)>

**Cc:** Carrie Schurg <[caschurg@AustinRogersPA.com](mailto:caschurg@AustinRogersPA.com)>

**Subject:** RE: My Solar Clients' Dispute Over 5 Year PPA Terms

"Richard:

I am in receipt of your email. In this specific instance, assuming based on your email that the subject of the potential complaint is the 5 year term of the PPAs, Duke agrees that dispute resolution section of the Interconnection Procedures would not apply.

I would appreciate the advanced notice you have offered.

Thank you,  
Rebecca"

## EXHIBIT, "B"

**From:** "Dulin, Rebecca Jean" <[Rebecca.Dulin@duke-energy.com](mailto:Rebecca.Dulin@duke-energy.com)>  
**Date:** August 11, 2017 at 1:15:34 PM EDT  
**To:** Richard Whitt <[rlwhitt@AustinRogersPA.com](mailto:rlwhitt@AustinRogersPA.com)>  
**Cc:** DERContracts <[DERContracts@duke-energy.com](mailto:DERContracts@duke-energy.com)>, "Freeman, Gary R" <[Gary.Freeman@duke-energy.com](mailto:Gary.Freeman@duke-energy.com)>, Carrie Schurg <[caschurg@AustinRogersPA.com](mailto:caschurg@AustinRogersPA.com)>  
**Subject:** RE: Notice of Dispute – [a solar developer]

Richard,

"... Duke Energy Progress, LLC's ("DEP" and together with DEC, "the Companies") significant ongoing efforts to manage the approximately 2,100 megawatts ("MW") of proposed generator Interconnection Requests in the Companies' South Carolina interconnection queues."

"From the outset of processing Newbery's Interconnection Request, DEC made [a solar developer] aware of the significant queue backlog and delays associated therewith, and DEC continued to communicate with [a solar developer] throughout the year on its status in the queue and the number of remaining projects to be studied before [a solar developer]."

Regards,  
Rebecca [Dulin], [as counsel for DEC].

**BEFORE  
THE PUBLIC SERVICE COMMISSION  
OF SOUTH CAROLINA  
DOCKET NO. 2017-321-E**

IN RE: )  
Whitetail Solar, LLC; Rhubarb One LLC; )  
Cotton Solar, LLC; and Shorthorn Holdings, )  
LLC, )  
 )  
Complainants/Petitioners, )  
 )  
v. )  
 )  
Duke Energy Carolinas, LLC and )  
Duke Energy Progress, LLC, )  
 )  
Defendants/Respondents. )  
 )

**CERTIFICATE OF SERVICE**

I, Carrie A. Schurg, an employee of Austin & Rogers, P.A., certify that I have served the Reply to Defendants/Respondents' Response to Complainants/Petitioners' Motion to Maintain Status Quo, Docket Cover Sheet, and this Certificate of Service, via electronic mail on November 6, 2017, as indicated below.

**Andrew M. Bateman**

Email: abateman@regstaff.sc.gov

**Frank R. Ellerbe, III**

Email: fellerbe@sowellgray.com

**Heather Shirley Smith**

Email: Heather.smith@duke-energy.com

**Rebecca J. Dulin**

Email: Rebecca.Dulin@duke-energy.com

/s/ \_\_\_\_\_  
Carrie A. Schurg

November 6, 2017  
Columbia, South Carolina